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June 16, 2004

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**Via Electronic Filing**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth St., S.W.  
Washington, DC 20554

Re: **Ex parte presentation: WT Docket No. 02-55**

Dear Ms. Dortch:

Verizon Wireless, by its attorneys, hereby responds to the latest submissions from Nextel Communications Inc. ("Nextel") and several Public Safety organizations.<sup>1</sup> Public Safety deserves the best possible solution to the interference problems Nextel has caused. The Consensus Plan, however, falls short of the mark. It relies upon an unlawful giveaway of public property to Nextel. It fails to allot sufficient funds to implement band realignment, providing only one quarter of the funds earmarked for Public Safety under the CTIA compromise plan. And its latest iteration purports to provide 2 MHz of encumbered spectrum that will be limited in its utility for Public Safety.

Public safety and the taxpayers deserve a far better outcome than Nextel is offering. Nextel, throughout this proceeding, has sought to create the illusion of fully responding to Public Safety's needs. The rhetoric of its promises, however, never matches the reality of its commitments. This was true before in its claim that \$850 million was sufficient to complete rebanding of the 800 MHz band and that its plan was legally sustainable. It is equally true now, as Nextel ostensibly offers 2 MHz of spectrum for Public Safety when, in fact, the spectrum is unlikely to be usable by Public Safety at all. The latest Nextel gambit is yet another attempt to secure a

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<sup>1</sup> Ex parte presentation of Nextel Communications, Inc., WT Dkt. No. 02-55 (filed June 9, 2004) ("Nextel June 9 Ex Parte"); Ex parte presentation of Association of Public-Safety Communications Officials – International, Inc., *et al.*, WT Dkt. No. 02-55 (filed June 14, 2004) ("APCO June 14 Ex Parte").

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spectrum windfall by hyping the value of its “contributed” spectrum beyond reason.<sup>2</sup>

As detailed below, a close and careful examination of the latest Nextel proposal reveals several serious problems. First, the additional spectrum does not solve the Public Safety interference problem. Instead, it recreates the very interference conundrum this proceeding is attempting to resolve. Second, Nextel’s claim that this new spectrum promotes Public Safety interoperability solutions is not credible. Interoperability requires consistent spectrum and funding for systems, equipment and software. Nextel’s new plan offers neither. Third, Nextel concedes that the proposal would increase retuning costs. However, no new funding would be provided.

Verizon Wireless supports the CTIA proposal because it is better for Public Safety and better for the taxpayers. Public Safety gets the guarantee of \$3 billion cash – more than quadrupling Nextel’s offer. Taxpayers get the guarantee of at least \$5 billion from the auction of the 1.9 GHz spectrum. Nextel gets the guarantee of nationwide spectrum at 2.1 GHz. Verizon Wireless, Cingular, Sprint, T-Mobile, AT&T Wireless and the other CTIA members get no guarantee of anything other than the chance to participate in the auction of 1.9 GHz spectrum. Any objective observer would conclude that the CTIA plan provides far superior outcomes for Public Safety and the American taxpayer.

**The Spectrum Offered By Nextel Is Not Readily Usable for Public Safety Needs.**

On June 4, 2004, Nextel submitted a new proposal that purportedly would give Public Safety another 2 MHz of spectrum to address Homeland Security and Public Safety interoperability needs.<sup>3</sup> In the face of questions concerning the basic

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<sup>2</sup> Indeed, Verizon Wireless believes that the following observation recently submitted by Nextel is an appropriate characterization of its own actions: “As the Commission approaches a conclusion to this proceeding, certain incumbent licensees within the 800 MHz band are attempting to use this proceeding to dramatically improve their current spectrum holdings...” Ex parte presentation of Nextel, WT Dkt. No. 02-55 at 2 (filed June 14, 2004).

<sup>3</sup> Ex parte presentation of Nextel Communications, Inc., WT Dkt. No. 02-55 (filed June 4, 2004) (“Nextel June 4 Ex Parte”).

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credibility of its claims,<sup>4</sup> Nextel has provided further details on how its latest spectrum scheme would work. Unfortunately, those details reveal that Nextel's proposal provides no guarantee that the additional 2 MHz will meet Public Safety needs:

- Nextel admits that the 2 MHz of spectrum being contributed is limited by interference and “*may not be optimum assignments for mission-critical Public Safety communications.*”<sup>5</sup>
- Nextel now says that the 2 MHz of spectrum it would vacate would not be given to Public Safety but, rather, made available as a home for relocating other 800 MHz users. If the other users can be enticed to move to this newly contributed spectrum, then Public Safety could use that “cleared” spectrum.
- Nextel discloses that the types of 800 MHz users who might be enticed into relocating to the contributed spectrum are limited -- only to “*non-Nextel EA licensees, iDEN operators, other cellular-type systems, campus-type communications deployments.*”<sup>6</sup>
- Nextel admits that its new proposal involves “some additional retuning of non-Nextel 800 MHz incumbents.”<sup>7</sup> Yet Nextel refuses to commit any additional funds for the new retuning costs and, instead, proposes to “*pay additional retuning expenses out of the Relocation Fund.*”<sup>8</sup>

The Nextel June 9 Ex Parte, like the Nextel June 4 Ex Parte, is notable for its silence concerning several key questions that run to the feasibility of its plan. For Nextel's plan to work, a sufficiently large number of licensees must be willing to

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<sup>4</sup> Ex parte presentation of CTIA, WT Dkt. No. 02-55 (filed June 9, 2004); Ex parte presentation of Verizon Wireless, WT Dkt. No. 02-55 (filed June 9, 2004) (“Verizon Wireless June 9 Ex Parte”).

<sup>5</sup> Nextel June 9 Ex Parte at 2 (emphasis added).

<sup>6</sup> *Id.* at 8 (emphasis added).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (emphasis added)

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relocate to the 816-817/861-862 MHz spectrum in geographic areas where Public Safety needs additional frequencies.<sup>9</sup> Nextel glosses over the question of whether such licensees could be persuaded to relocate to this spectrum and whether they would do so in a manner that would result in a consistent and adequate number of channels in each market to further Public Safety interoperability and Homeland Security purposes.

Closer examination of Nextel's latest proposal reveals a number of other problems. First, Nextel suggests that non-Nextel, non-upper 200 channel EA licensees would find the added 2 MHz as a "desirable destination" during the 800 MHz band realignment.<sup>10</sup> Nextel, however, fails to disclose that very few such entities exist. Indeed, a review of the FCC's Universal Licensing System shows a very limited number of non-Nextel, non-upper 200 channel EA licensees in the major markets across the country – the markets where Public Safety needs spectrum the most. Specifically, the FCC's database reveals the following inventory of non-Nextel EA licensees:

- *No Licensees* in Los Angeles, Chicago, Detroit, Houston, Cleveland, St. Louis, Seattle, Pittsburgh, San Diego, Phoenix, Kansas City, Milwaukee, Cincinnati, Memphis, Charlotte, Minneapolis/St. Paul and Tucson;
- *One Licensee With Just Five Channels* in New York, Dallas, Miami, Orlando, San Antonio, Tampa and Denver; and
- *Two Licensees With Five Channels Each* in Philadelphia and Boston.

This sample of major markets shows that, in twenty-six of the country's largest cities, Nextel will not be able rely on its primary candidate for relocation – non-Nextel, upper 200 channel EA licensees. In this case, Nextel's "dominance" of the 800 MHz band undermines its strategic goals.<sup>11</sup>

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<sup>9</sup> Nextel indicates that only "consenting" 800 MHz licensees would be relocated to this newly offered spectrum. Nextel June 9 Ex Parte at 2.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> See "Nextel runs into SouthernLinc as it sweetens 800 MHz pot", RCR News, June 14, 2004 ("This is spectrum that Nextel absolutely dominates," said Lawrence Krevor, Nextel vice president of government affairs.")

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Second, even where some of these existing EA licensees might have sufficient spectrum holdings, there is no assurance that they would agree to relocate to this sliver of spectrum. For example, EA licensees with more than 40 channels would need to consider the implications of subjecting their channels to two entirely different sets of technical regulations before relocating to this spectrum.<sup>12</sup>

Third, Nextel speculates that other classes of users (private iDEN® operators, campus-type communications systems and service providers that can deploy a more robust or interference-limited network) would find this to be suitable spectrum. What Nextel does not answer is why any of these licensees would *consent* to accepting spectrum that is subject to significant technical restrictions.

In fact, there are few incentives for private wireless users to relocate into the 816-817/861-862 MHz bands. The vast majority of such users continue to operate noise-limited systems that would be significantly degraded by operating in what is essentially a guard band between Nextel and traditional high site dispatch operations. Without this voluntary migration, Nextel will not be able to provide 40 new channels nationwide for Public Safety use.<sup>13</sup> This is especially true in the major metropolitan areas where there are few, if any, non-Nextel EA licensees – the group considered by Nextel most likely to relocate to Nextel’s newly proposed spectrum.

Since it will be difficult, if not impossible, for Nextel to clear an additional 40 channels in the major cities where Public Safety needs spectrum the most, it is misleading and unfair to Public Safety for Nextel to portray its offer of an additional 2 MHz as the solution for Public Safety interoperability and enhanced homeland security. The haphazard nature of this proposed allotment of spectrum for Public Safety is hardly appropriate for enhancing Public Safety interoperability.

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<sup>12</sup> If an EA licensee has 100 channels licensed, it can only relocate 40 channels of its operations to the 2 MHz of spectrum adjacent to Nextel. These operations would be permitted to utilize the low-power, low-site “cellular” rules while the remaining 60 channels would still be subject to the limited high-power, high-site “non-cellular” rules relevant to all spectrum below 861/816 MHz under the Nextel plan.

<sup>13</sup> Nextel is not the sole EA licensee in the 816-817/861-862 MHz band. The bands are at least partially authorized to other EA licensees in at least 16 EAs within the contiguous United States.

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Interoperability demands an environment where standards are established for spectrum allocations, technical performance and inter-agency mutual aid protocols. However, as shown above, the Commission cannot possibly assume that Nextel's proposal will lead to a consistent allotment of new spectrum for Public Safety.

**The Sufficiency Of Funding For Public Safety Remains Open And Unsatisfied Under Nextel's Plan.**

Nextel's new proposal not only leaves unanswered serious questions raised by CTIA and others as to the adequacy of funding this massive rebanding project, but in fact exacerbates the funding problems:

- Nextel acknowledges that its offer of new spectrum will raise rebanding costs, yet Nextel fails to commit to any increase in its offer of \$850 million;
- Nextel claims that the new spectrum will promote Public Safety interoperability but the spectrum is unlikely to be available for such purposes. Interoperability would require money not on the table in any event – money for common systems, money for compatible equipment and money to modify existing protocols; and
- Nextel argues that the Consensus Plan does not expose Public Safety organizations to the obligation to expend funds before being compensated, but such commitments are not found in the Consensus Plan itself as opposed to supplemental comments by Nextel. Moreover, the Nextel June 9 Ex Parte declares that Public Safety will only be entitled to “covered” rebanding costs – thereby emphasizing that Public Safety's actual costs may not be “covered.”<sup>14</sup>

Any rebanding plan that fails to include sufficient funding will not solve Public Safety's problems. As the Public Safety organizations supporting Nextel's plan have noted: “we understand that the item before the Commission will require a much larger funding commitment from Nextel and ensure that the total cost of rebanding is covered, regardless of the final price tag.”<sup>15</sup> The record shows that

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<sup>14</sup> Nextel June 9 Ex Parte at 8 n.20.

<sup>15</sup> APCO June 14 Ex Parte at 2.

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Nextel's \$850 million of rebanding funding is seriously deficient. In its March 1, 2004 submission to the Commission, Preferred Communication Systems, Inc. ("Preferred") estimates that it will cost at least \$3 billion to implement the Consensus Plan.<sup>16</sup> An important component of Preferred's analysis is its assumption that a substantial number of Public Safety radios will need to be replaced that were not accounted for in the original estimates of the Consensus Parties. Motorola, the primary supplier of Public Safety radios (and a major shareholder in Nextel), validates this assumption and estimates that 30 percent of existing NPSPAC-capable radios cannot be retuned and will need to be replaced.<sup>17</sup> The Consensus Parties estimated that only 1 percent of the radios would need to be replaced. The difference represents more than \$2 billion in added expense to implement the Consensus Plan.

While Nextel attempts to refute the Motorola assumptions,<sup>18</sup> its own analysis belies its claim. Nextel notes that Motorola's 30 percent replacement figure applies only to NPSPAC radios, and states that the number of non-retunable NPSPAC-capable radios "is likely far smaller" than the estimates provided by Motorola.<sup>19</sup> However, the analysis employed by the Consensus Parties notes that the vast majority of Public Safety radios in use today are NPSPAC-capable, and estimates that number to be more than 2 million.<sup>20</sup> The Consensus Parties themselves have expressed uncertainty and reservation about the number of radios that would ultimately need to be replaced, and have noted that even a small increase above the 1 percent estimate would result in a significant cost increase.<sup>21</sup>

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<sup>16</sup> Ex parte presentation of Preferred Communication Systems, Inc., WT Dkt. No. 02-55 (filed Mar. 1, 2004) ("Preferred Ex Parte").

<sup>17</sup> Ex parte presentation of Motorola, Inc., WT Dkt. No. 02-55 (filed Nov. 3, 2003) ("Motorola Ex Parte").

<sup>18</sup> Ex parte letter of Nextel Communications, Inc., WT Dkt. No. 02-55 (filed Feb. 2, 2004) ("Nextel February 2 Ex Parte").

<sup>19</sup> *Id.* at 4.

<sup>20</sup> Supplemental Comments of Consensus Parties, WT Dkt. No. 02-55 (filed Dec. 24, 2002) ("Consensus Plan Supplemental Comments") at Appendix A.

<sup>21</sup> *Id.* at 6.

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Under Nextel's "enhanced" Consensus Plan, even more funding will be necessary to develop amendments to existing protocols to account for the influx of new channels. Money will be needed for the deployment of new 800 MHz systems that would be enabled through the establishment of these new channels. The CTIA compromise plan provides certain and sufficient funding. Nextel's plan does not.

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After years of arguing that the Consensus Plan must be adopted as a whole without modification by the Commission, Nextel has come in at the 11<sup>th</sup> hour with a unilateral proposal that reduces the amount of spectrum it has proposed to surrender and reduces its own estimated financial contributions (by approximately \$762 million according to Bear, Stearns).<sup>22</sup> In addition, as discussed at length in the Verizon Wireless June 9 Ex Parte, Nextel continues to seek "credit" for its rebanding costs (required due to its interference to Public Safety) and its costs for relocation in the 1.9 GHz band. Nextel also grossly overvalues the spectrum that it is "surrendering." Nextel's purported contributions are based upon inflated spectrum valuations and unwarranted claims for credits. Nextel's valuation for its interleaved 800 MHz spectrum implies a value of over \$5.7 billion for 10 MHz. At the same time, Nextel maintains that 10 MHz at 1.9 GHz is only worth \$3.335 billion. The obvious inconsistencies inherent in these valuations are impossible to reconcile.<sup>23</sup> Nextel nevertheless asks the Commission (and its Consensus Plan partners) to view its new proposal as an additional sacrifice when, in reality, it affects new parties, creates numerous complex issues that must be addressed, and continues to provide an enormous windfall.

Public safety deserves better than Nextel's woefully under funded financial commitments and its newly offered, encumbered 2 MHz of spectrum. Public Safety deserves a sufficiently funded and legally sustainable framework for eliminating Nextel's interference to its operations. Public Safety deserves the fully funded and fully enforceable conditions set forth in the CTIA compromise plan.

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<sup>22</sup> "Nextel Steps Toward a Spectrum Compromise," Bear Stearns Equity Research Report, June 8, 2004, Exh. 2.

<sup>23</sup> Verizon Wireless June 9 Ex Parte at 3, 7.



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Sincerely,

/s/

R. Michael Senkowski

Counsel for Verizon Wireless